

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA  
SACRAMENTO DIVISION

MICHAEL J. BRODHEIM.

**Plaintiff,**

V.

MICHAEL CRY, et al.,

### Defendants.

2:02-cv-0573 FCD KJN (PC)

**STIPULATION AND ORDER  
TO CONTINUE HEARING  
ON MOTION TO DISMISS**

Counsel for Plaintiff and Defendants stipulate to a continuance of the hearing on Defendants' Motion to Dismiss the Complaint currently scheduled for April 7, 2011, until May 19, 2011, at 10:00 a.m. Plaintiff has not yet filed an opposition and Defendants have not filed their reply. Thus, further briefing is anticipated.

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1 The continuance is requested due to Plaintiff's recent grant of a parole date by the  
2 California Board of Prison Terms. However, after the parole hearing was held, the U. S. Supreme  
3 Court issued its ruling in *Swarthout v. Cooke*, \_\_\_ U.S. \_\_\_, 131 S.Ct. 859 (2011), making it  
4 unclear whether the grant of parole is still in effect. Additional time is necessary to determine  
5 whether the District Court can, or will, order Plaintiff's release. Should Plaintiff be released on  
6 parole, the parties agree that this matter may become moot, and no further briefing will likely be  
7 necessary. Accordingly, the parties request a continuance of the hearing on Defendants' Motion  
8 to Dismiss until May 19, 2011.

9 Dated: March 30, 2011 By: /s/ **Kelli M. Hammond**  
10 KELLI M. HAMMOND  
Deputy Attorney General  
Attorney for Defendants

12 Dated: March 30, 2011 By: /s/ Joseph D. Elford  
13 JOSEPH D. ELFORD  
14 Attorney for Plaintiff

## IT IS SO ORDERED.

DATED: April 1, 2011

Kendall J. Newman  
KENDALL J. NEWMAN  
UNITED STATES MAGISTRATE JUDGE

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